

*** NOT FOR PUBLICATION ***

NO. 26126

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

RICHARD A. JERNIGAN, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 02-1-0060)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of appellant's statement of jurisdiction and the record, it appears that the circuit court's August 19, 2003 order denying appellant's HRPP Rule 40 petition for post-conviction relief was appealable by notice of appeal filed within thirty days after the order was entered. See HRPP 40(h); HRAP 4(b)(1). Appellant's notice of appeal is deemed filed on September 19, 2003 when it was delivered to prison officials for mailing. See Setala v. J.C. Penney Co., 97 Hawai'i 484, 40 P.3d 886 (2002). The notice of appeal deemed filed on September 19, 2003 was not filed within thirty days after entry of the August 19, 2003 order inasmuch as September 19, 2003 was the thirty-first day after August 19, 2003. The notice of appeal is an untimely appeal of the August 19, 2003 order. Our recognized exceptions to the requirement that notices of appeal be timely filed do not apply in this case and thus, we lack jurisdiction over this appeal. See Grattafiori v. State, 79 Hawai'i 10, 13,

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897 P.2d 937, 940 (1995) (“[C]ompliance with the requirement of the timely filing of a notice of appeal is jurisdictional, and we must dismiss an appeal on our own motion if we lack jurisdiction.”). Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai‘i, January 7, 2004.